In his plaint the plaintiff also claims an enquiry as to the rents and profits of the said trust property and an order that the defendant do pay such rents and profits to the plaintiff. As the defendant has never been in possession of the property and has received no rents or profits that part of the claim has been withdrawn. The defendant must pay the costs of this Suit.

Order accordingly.

Solicitors: *Lovelace & Hastings; Bannon & Bailey.*

OFFICIAL ADMINISTRATOR, K.L. v. CHINA INSURANCE CO. LTD.

[O. C. J. (Buhagiar J.) June 14, 1955]

[K. L. — Civil Suit No. 141 of 1955]

Civil Procedure Code (Cap. 7) s. 459 — Summary procedure — Not applicable where the claim is on a Statutory debt.

In this case the plaintiff had instituted a suit under the summary procedure. In that suit he stated that in an action against one L.N. to recover damages in respect of fatal injuries and consequent loss and expense sustained by the deceased P.C. judgment was entered in his favour against the said L.N. for a sum of $18,000 and costs and that such liability of the said L.N. was covered by the terms of a policy of insurance issued to L.N. by the defendants as approved insurers within the meaning of reg. 2 of the Motor Vehicles Third Party Risks Regulations. The plaintiff claimed that by reason of reg. 8 of the said Regulations the defendants were liable to pay him the said judgment for $18,000 and the costs. The defendants applied by Summons in Chambers for an order that the suit be dismissed on the ground that the plaintiff was suing on a Statutory debt and therefore the provisions of s. 459 of the Civil Procedure Code dealing with summary procedure did not apply.

Held: (1) the claim in this case was on a Statutory debt and not on debt based on an express or implied contract and therefore outside the scope of s. 459 of the Civil Procedure Code; (2) in this case the order necessary for the ends of justice and to prevent abuse of process of the Court is an order amending the error so that the suit may proceed as a non-summary procedure suit.

Case referred to:—

(1) *China Insurance Co. Ltd. v. Margaret Paramor* F.M. Civil Appeal No. 31 of 1955 — unreported.

SUMMONS IN CHAMBERS adjourned to open Court.

D. G. Rawson for the plaintiff.

H. L. Wrigglesworth for the defendant.

Cur. Adv. Vult.

Buhagiar J.: — This is a summons in Chambers, adjourned to open Court, in which the defendant applied for an order that the suit be dismissed with costs. The plaintiff instituted a suit under the summary procedure; in this suit the plaintiff stated that in an action against one Lee Ngiow to recover damages in respect of fatal injuries and consequent loss and expense sustained by the deceased P. Chellappah judgment was entered in his favour against the said Lee Ngiow for a sum of $18,000 and costs, that such liability of the said Lee Ngiow was covered by the terms of a policy of insurance issued to Lee Ngiow by the defendants as approved insurers within the meaning of regulation 2 of the Motor Vehicles Third Party Risks Regulations; he claimed that by reason of regulation 8 of the Motor Vehicles Third Party Risks Regulations the defendants were liable to pay him the said judgment for $18,000 and costs in the said civil suit.

Mr. Wrigglesworth for the defendant submitted that the plaintiff is claiming on a statutory debt and therefore the provisions of section 459 of the Civil Procedure Code dealing with summary procedure do not apply. He pointed out that that section differs from Order 3 rule 6 of the English Rules of the Supreme Court in that in that Order special provision is made for special indorsement in an action where the plaintiff seeks to recover a debt or liquidated demand in money arising on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty. Counsel argued that in this case there is no privity of contract between the plaintiff and the defendant and that, as stated in the statement of claim, the defendant is sued by reason of the provisions of regulation 8 of the Motor Vehicles Third Party Risks Regulations. The learned Counsel referred to the judgment of the Court of Appeal in *China Insurance Co. Ltd. v. Margaret Paramor*[1], where the Court expressed the view that the claim (similar to the claim of the plaintiff in this case) was a statutory debt and not a debt based on an express or implied contract and therefore outside the scope of section 459.

Mr. Rawson, Counsel for the plaintiff raised some preliminary points with which I shall deal later. With regard to the substantive point he submitted that the rule of privity of contract suffers an exception in the case of motor insurance contracts. He referred to *Cheshire and Fifoot on Contracts* and *to Hector Hughes: Road Users' Rights, Liabilities and Insurance,* 1938 ed. where at p. 184 it is stated:—

"The general rule is that rights and obligations conferred by contract are personal to the contracting parties, and do not devolve upon strangers to the contract even though the contract itself purports to achieve this end. This rule suffers considerable modification when applied to motor insurance contracts. So far as compulsorily insurable risks are concerned, the insurers' undertaking may be enforced against them not only by the insured, (and persons who, by novation or assignment, are put in his place) but also by other parties whom the policy purports to cover (section 36(4), Road Traffic Act, 1930),

and by injured third parties (section 10 of the Road Traffic Act, 1934; Third Parties (Rights against Insurers) Act, 1930) up to and even beyond the fullest extent of their contractual liability."

The learned Counsel argued that the defendant's liability is based on the contract of insurers and not on statute and therefore the plaintiff's claim is not outside the scope of section 459 of the Civil Procedure Code.

With regard to the judgment of the Court of Appeal in *China Insurance Co. Ltd. v. Margaret Paramor*[1], the learned Counsel submitted that that judgment is not binding on this Court as the statement in that judgment with regard to the point now before this Court is an *obiter dictum*.

It is not necessary for me to consider whether that statement is an *obiter dictum* or the *ratio decidendi* because, I agree with that statement as giving the correct view of the law. It is true that the defendant's liability has its origin in contract that is the insurance contract between the defendants and the assured but the right of the plaintiff (the injured party) of a direct cause of action against the defendant is given by statute and the plaintiff's claim against the defendant does not arise upon contract but upon statute. Regulations 8 and 9 of the Motor Vehicles Third Party Risks Regulations are modelled respectively on section 10 of the Road Traffic Act, 1934 and section 1 of the Third Parties (Rights against Insurers) Act, 1930. Under section 1 of the 1930 Act the injured person was required first to sue a "man of straw" and obtain judgment and then proceed to make the "man of straw" bankrupt and then obtain a transfer of the policy of insurance; this was considered a clumsy and unfortunate procedure.

Under this procedure the injured party when he proceeded to sue the insurer was faced with the arbitration clause (common in insurance policies) and also with all the defences open against the assured. Furthermore long before the termination of such long-drawn-out and expensive litigation, it may well be that the injured party has himself become insolvent. Section 10 of the 1934 Act gave the injured party a direct cause of action against the insurer once judgment was obtained notwithstanding that the injured party had not proceeded to make the assured bankrupt under the 1930 Act. In an action by the injured person against the insurer, the liability of the insurer may be greater than that undertaken by contract between himself and the assured. Section 10 of the 1934 Act goes much further than section 1 of the 1930 Act under which the injured person could obtain an assignment of the policy of insurance from the trustee in bankruptcy; by virtue of such assignment the injured person stepped in the shoes of the assured and could have no greater rights than the assured had against the insurer. That section effected a statutory subrogation of the injured person to the rights of the assured. Section 10 of the 1934 Act does not provide for an assignment of the insurance policy but gives the injured person a direct cause of action against the insurer for the amount obtained by judgment; under this section the liability of the insurer is statutory not contractual.

For the above reasons, therefore, I hold that that the suit in this case was not properly admitted as a Summary Procedure Suit.

Counsel for the plaintiff submitted that the defendants were not properly before the Court; no appearance was entered and there is only this summons in chambers. He submitted that in any case the suit should not be dismissed as under sections 597 and 598 the Court has inherent powers to amend any defect or error in any proceeding in a suit. The learned Counsel also submitted that there should be judgment for the plaintiff by default. I do not think any useful purpose would be served by deciding whether the defendants are properly before the Court or not; I have no hesitation in saying that an order dismissing the suit would not be an order in the interests of justice but, on the other hand, as I have stated earlier, this suit was not properly admitted as a Summary Procedure Suit and I do not think that the plaintiff is entitled to judgment. In my opinion the order necessary for the ends of justice and to prevent abuse of process of the Court is an order amending the error.

For the above reasons I dismiss the application for the dismissal of the suit and I order that the words "summary procedure" at the head of the plaint be deleted, and also the signatures of the plaintiff and of his solicitors to that heading; that the suit be treated as a non-summary procedure suit, and that the defendants do have seven days from the date of the delivery of this judgment in which to enter an appearance — the summons for directions and all other steps necessary for the conduct of the suit to follow in the ordinary course.

Costs of this summons to be borne by the plaintiff.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; S. M. Yong & Co.*